

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

AHMALE LEE HESLEY,

Defendant-Appellant.

---

UNPUBLISHED

March 31, 2009

No. 282084

Oakland Circuit Court

LC No. 07-214182-FC

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for three counts of first degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(b)(ii) (victim between the ages of 13 and 16, perpetrator a relative). Defendant was sentenced to concurrent terms of 81 months to 20 years in prison on each count. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise from allegations of sexual assault brought by the victim, his niece. The first two charged instances of sexual assault occurred when the victim arrived at defendant's home early one morning and fell asleep on the couch. The victim awoke when she felt defendant digitally penetrating her vagina and touching her breasts under her clothing. She rolled over and told defendant she was trying to sleep, at which point he left the room. Defendant returned and told the victim to come to his bedroom. In the bedroom, defendant pulled down the victim's pants and penetrated her, both digitally and with his penis.

The third incident also occurred at defendant's home. Although the victim's brother and cousins were present, they had been sent outside by defendant to perform yard work. Defendant told the victim to get by the refrigerator and pull down her pants. When he returned from checking on the boys, defendant again told her to pull her pants down. When the victim did not comply, defendant pulled them down, pushed her in front of the refrigerator and placed his penis inside of her vagina. It was not until approximately one year after the alleged assaults occurred that the victim formally reported her allegations of rape to a liaison officer at her high school.

Defendant was charged with three counts of CSC-I, MCL 750.520b(1)(b)(ii). The elements of this offense are: (1) the person engages in sexual penetration with another person; (2) that other person is at least 13 but less than 16 years of age, and (3) the actor is related to the

victim by blood or affinity to the fourth degree. MCL 750.520b(1)(b)(ii). The parties stipulated at trial that the victim was between the ages of 13 and 16 when the alleged assaults occurred, and that defendant was her uncle by marriage. The only element contested at trial was whether the acts of penetration occurred.

Defendant argues on appeal that there was insufficient evidence to support his convictions. We disagree. This Court reviews the record de novo when considering a claim of insufficient evidence. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). The evidence is viewed “in a light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that the elements of the offense were proven beyond a reasonable doubt.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

Defendant asserts that the evidence, comprised mainly of the victim’s testimony, was insufficient to sustain his convictions. The focus of defendant’s argument is that the testimony lacked credibility. However, “[i]t is the province of the jury to . . . assess the credibility of witnesses.” *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Furthermore, this Court affords deference to the jury’s “special opportunity to . . . assess the credibility of the witnesses.” *Unger, supra* at 228-229. Although denied by defendant, the victim testified to three instances of sexual assault by defendant. The victim, defendant and witnesses were effectively examined by counsel, thereby providing the jury with an opportunity to assess their credibility. By convicting the defendant, the jury impliedly found the victim’s testimony to be more credible.

In further support of his argument on appeal, defendant emphasizes the testimony that called into question the victim’s credibility. Specifically, defendant references opinions expressed by family members that the victim does not have a reputation for truthfulness, testimony that the victim had previously falsely accused another individual of rape, and the denial of any occurrence of inappropriate sexual conduct involving defendant by his stepdaughter. However, the cited testimony does not compromise new or different evidence. The jury heard this evidence and nevertheless found the victim’s testimony to be credible. Again, “[i]t is the jury’s task to weigh the evidence and decide which testimony to believe.” *Unger, supra* at 222, quoting *People v Jones*, 115 Mich App 543, 553; 321 NW2d 723 (1982).

Defendant also argues that the proffered testimony is insufficient because it lacks corroboration. However, corroboration of a victim’s testimony is not required. MCL 750.520h provides: “[t]he testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.” Even so, the prosecution did present some corroborating evidence. The victim’s high school teacher testified that she had approached him with concerns about inappropriate comments from an uncle sometime during the school year before the assaults occurred. The victim also told a friend that defendant had raped her shortly after it occurred. It was also undisputed that the victim was at defendant’s house almost daily, and was often alone with defendant.

Viewing these facts in the light most favorable to the prosecution, a rational trier of fact could have determined that all the necessary elements were proven beyond a reasonable doubt. The jury is free to believe or disbelieve testimony, and is uniquely situated to assess the credibility of a witness. The jury chose to believe the victim’s testimony. Hence, sufficient evidence was presented to sustain defendant’s convictions.

Defendant also contends that the verdict was against the great weight of the evidence. A trial court's grant or denial of a new trial on the ground that the verdict was against the great weight of the evidence is reviewed for an abuse of discretion. *Unger, supra* at 232. A trial court "may grant a motion for a new trial based on the great weight of the evidence only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.*

Again, defendant's argument focuses on the issue of credibility. The Michigan Supreme Court has determined that "[n]ew trial motions based solely on the weight of the evidence regarding witness credibility are not favored." *Lemmon, supra* at 639. When testimony is in direct conflict, the credibility of the witnesses is for the jury to determine and a reviewing court may not substitute its view of credibility. *Id.* at 642-643. "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *Id.* at 647. An exception will only be found if the testimony contradicts indisputable physical law, or is so "inherently implausible that it could not be believed by a reasonable juror." *Id.*

Contrary to defendant's assertions, the victim's testimony remained consistent throughout trial. Although she could not provide specific times or dates for the assaults, the victim was able to recount the details of each incident with little variance. Her mother also testified that the victim's version of events had remained consistent. Defendant generally challenges the victim's credibility, but does not identify any specific inconsistencies within her testimony.

Despite conflicting testimony by the victim and defendant, it cannot be concluded "that the evidence preponderates so heavily against the jury's verdict that it would be a miscarriage of justice to allow it to stand." *Unger, supra* at 232. Defendant fails to identify any evidence that "the testimony contradicts indisputable physical facts or law" or is so "inherently implausible" that it could not be believed by a reasonable juror. *Lemmon, supra* at 647. The question is one of credibility, and must be properly left with the jury. *Id.* at 646-647. Therefore, this Court will not disturb the jury's determination.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter  
/s/ Deborah A. Servitto